IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 21029 of 2007(C)

CMA.72/2004 of DISTRICT COURT, PALAKKAD

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PETITIONER:

1. STATE OF KERALA,REPRESENTED BY THE CONSERVATOR OF FORESTS,EASTERN CIRCLE,PALAKKAD.

2. THE DIVISIONAL FOREST OFFICER, PALAKKAD.

BY SRI.M.P.PRAKASH,SPL.GP FOR FOREST

RESPONDENTS:

THOMAS GEORGE,S/O.JOSEPH GEORGE, KADUVANKULAM DHONI P.O.,PALAKKAD.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.21029 of 2007

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Dated this the 17th day of July, 2007

J U D G M E N T

The State of Kerala represented by the Conservator of Forests, Eastern Circle, Palakkad and the Divisional Forest Officer (DFO), Palakkad, are the petitioners in this writ petition. They are challenging Ext.P4 judgment of the District Judge, Palakkad in CMA No.72/2004, whereby Ext.P2 order of the DFO, Palakkad ordering confiscation of the vehicle belonging to the respondent, which was seized on allegations of commission of forest offence, has been set aide. The contention of the petitioners is that under Section 61B of the Kerala Forest Act, for avoiding confiscation of the vehicle involved in a forest offence, it is not sufficient that the owner establishes his innocence alone. But it must further be proved that the person who was in charge of the vehicle had taken reasonable and necessary precautionary measures against such illegal user of the vehicle. In support of their contention the petitioners rely on the decision of *State of Kerala v. Mathew* reported in 1995 (2) KLT 772. According to the petitioners, in this case, the respondent has not proved with any acceptable

material on record that he has taken reasonable and necessary precautionary measures against illegal user of the vehicle.

2. I have considered the arguments of the learned Special Government Pleader (Forest) who argued the writ petition.

3. After considering the arguments, I am satisfied that the learned District Judge had specifically addressed himself the question as to whether the respondent had taken reasonable and necessary precautionary measures against the user of the vehicle and on the basis of the materials on record had come to the conclusion that the respondent in fact had proved to have taken such measures. I find that the driver of the vehicle who was one of the accused, gave a statement that he had transported the offending timber after obtaining key of the vehicle from the son of the owner of the vehicle, since the owner of the vehicle was out of station, making the son believe that it was proposed to be used for transporting timber belonging to a private person from his property. He categorically stated that the owner was innocent. Similar statements were given by two of the other accused also, in which they categorically stated that a false representation was made that the vehicle was being used for transporting timber from the property of a person named Hajiyar.

One Ravi had accompanied the driver of the vehicle to the house of the owner to fetch key of the vehicle. That Ravi also gave a separate statement corroborating the above statments. The respondent-owner himself gave a statement in which he had also stated that his son was made to believe that timber which was cut was from nearby plot. He stated that his vehicle was never before involved in any offence although the same was being plied for several years now. He further stated that one week prior to the incident, the vehicle was used for transporting the timber of the very same Hajiyar from his plot. According to the respondent, key of the vehicle was handed over bonafide believing that on this occasion also it was proposed to be used for legal purposes. The respondent also gave oral evidence before the confiscating authority to the above effect. While doing so, he categorically asserted that he had given strict instructions not to use the vehicle for any illegal purposes and he further stated that he was under the bonafide belief that his driver who was loyal to him would not use the vehicle for any such illegal purposes.

4. The only way the respondent could have discharged his burden to prove that he had taken reasonable and necessary precautionary measures against illegal user of his vehicle was to give oral evidence to that effect before the confiscating authority,

which the respondent in this case had done. The petitioners in this writ petition have no case that his version while giving evidence was disproved by cross-examining him. It is under the above circumstances that the learned District Judge came to the conclusion that the appellant, the respondent herein, had taken reasonable precaution against illegal user of the vehicle. I cannot say that this conclusion reached by the learned District Judge is in any manner perverse. It is a reasonable conclusion based on the evidence before him. That being so, even if another conclusion could have been arrived at by me, in so for as that conclusion cannot be said to be a unreasonable one based on the material before the learned District Judge, I do not think that I can, in exercise of my jurisdiction under Articles 226 and 277 of the Constitution of India, upset such findings of fact by reappreciating the evidence. In the above circumstances, I do not find any merit in the writ petition and accordingly the same is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.